

Attorney Docket No.: DC-0190
Inventors: Hamilton and Stanton
Serial No.: 10/089,475
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REMARKS

Claim 9 is pending in the instant application. Claim 9 has been rejected. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejection of Claims Under 35 U.S.C. §103

Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Moyer et al. ((Aug. 1999) *Am. J. Physiol.* 277(2 Pt 2):F271-6) in view of Cormack et al. ((1996) *Gene* 173:33-38). The Examiner suggests that Moyer et al. teach a method of measuring the effect of butyrate on expression of a CFTR-GFP nucleic acid and Cormack et al. teach mutants of GFP which fluoresce more intensely than wild-type GFP. It is suggested that it would have been obvious to one of skill in the art at the time the invention was made to combine the referenced teachings to practice the method of the instant invention. Applicants respectfully traverse this rejection.

Moyer et al. teach a construct containing a *cytomegalovirus promoter* driving expression of *wild-type* CFTR fused to green fluorescent protein (see page F273, paragraph bridging columns 1 and 2) to detect changes in Cl⁻ secretion and CFTR expression mediated by sodium butyrate. Cormack et al. teach eGFP. MPEP 2143.03 states that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The combined references fail to meet this requirement because neither Moyer et al. nor Cormack et al. teach or suggest

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the use of a mutant human CFTR cDNA coding region and a cDNA of an EGFP reporter gene linked at the 5' end to the mutant human CFTR cDNA coding region and wherein said cDNAs are under the regulation of the proximal human CFTR promoter region. Thus, it is respectfully requested that this rejection be reconsidered and withdrawn.

II. Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Advisory Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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